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Meſſrs. Douglas, Heron, *and Company*, = = Appellants.

John Grant, *Eſquire, One of the Barons of his Majeſty's Court of Exchequer in* Scotland, - } Reſpondent.

The Reſpondent's CASE.

JOHN *Fordyce* and *Andrew Grant* were Partners for many Years as Merchants, and Dealers in Bills of Exchange, and carried on their Buſineſs by two Houſes, one at *Edinburgh*, under the Name or *Firm* of *Fordyce, Malcolm*, and Company, and another at *London*, under the Name of *Fordyce, Grant*, and Company, though both Houſes were really the ſame, and conſiſted of the ſame Partners.

In Spring 1771, they came to a Reſolution of diſſolving their Partnerſhips, *John Fordyce* intending to retire from Trade, and *Andrew Grant* to carry on Buſineſs in his own Name.

Thoſe Views made it neceſſary for *Andrew Grant* to prepare a ſufficient Extent of Credit to enable him to carry on Buſineſs alone, by obtaining Guarantees for Accounts of Credit to be opened with different People; and in this he was aſſiſted by *John Fordyce*, his Partner and Brother-in-law, and the Reſpondent, his Brother, jointly; or by that of *John Fordyce* ſingly.

Alexander Ferguſon of *Craigdarroch*, a Director of the Appellants Company, being at *London* in Spring 1771, managing the Affairs of that Company, was conſulted by *John Fordyce* with regard to the Steps proper to be taken for ſupporting *Andrew Grant* upon the intended Separation taking place; and it appears from his Declaration, (given in this Cauſe) that he not only recommended the eſtabliſhing of Credits to *Andrew Grant*, but aſſiſted in obtaining them, by introducing Mr. *Fordyce* with that View to Meſſrs. *Kelby* and *Syme*, Merchants in *London*, and to Meſſrs. *Mayne* and *Needham*, Bankers in *Jermyn Street*, *London*, and Credits for *Andrew Grant* were afterwards procured from theſe Houſes; guaranteed in Part by *John Fordyce*, and in Part by the Reſpondent: But the Separation not having taken place, nothing followed upon them.

The preparatory Steps neceſſary to be taken before the Diſſolution of Houſes who had carried on Buſineſs ſo long and to ſo large an Extent as *Fordyce, Grant*, and *Fordyce, Malcolm*, and Company, neceſſarily took up ſome Time, but they were nearly ſettled in Spring 1772; and the Reſpondent is informed, That this Event would have taken place in *June* or *July* thereafter, had it not been prevented by the Bankruptcies hereafter to be mentioned.

In *March* 1772, *Alexander Ferguſon* was again ſent to *London* by the Appellants, to eſtabliſh Accounts for them with different Houſes there: And being intimately acquainted with *John Fordyce* and *Andrew Grant's* Intention of diſſolving their Partnerſhip, (in preparing for which Event he had given his Aſſiſtance) and knowing that the Diſſolution was ſoon to take place, he, from Friendſhip to *Andrew Grant*, formed a Plan of employing him as one of the Correſpondents of the Appellants in *London*, and the Terms of the Employment were ſettled by the following Letter from *Andrew Grant* to *Alexander Ferguſon*.

April, 1772. "Dear Sir, As I cannot have the Pleaſure of meeting with you To day, and underſtand you propoſe leaving *London* To-
"morrow Morning early, I ſhall mention to you what I underſtand to be the Terms agreed on between us for Meſſrs.
"*Douglas, Heron*, and Company, commencing an Account with MY Houſe in *London*, which pleaſe confirm in Reply
"to this.—1ſt, That Meſſrs. *Douglas, Heron*, and Company, ſhall have Liberty to draw upon *my* Houſe in *London* for
"what Sums, and at what Dates, they think proper, or order them to pay away Money to any of their Correſpondents.
"2dly, That for all Bills drawn at or under the Rate of Ten Days, Meſſrs. *Douglas, Heron*, and Company, ſhall, by the
"ſame Poſt, remit Bills on their Bankers, or other Bills on Bankers in *London*, ſufficient for the Payment of theſe Bills.
"3dly, That for all Bills drawn above the Rate of Ten Days, they ſhall remit Bills on Bankers as above, to be in the Hands
"of the Houſe in *London* at leaſt Ten Days before their Bills become due. 4thly, That they ſhall give no Order to pay away
"any Money ſooner than Five Days after the Houſe in *London* ſhall receive the Order; and the ſame Poſt that brings ſuch
"Order, ſhall bring Remittance in Bankers Bills for the ſame. 5thly, *Douglas, Heron*, and Company, ſhall conſtantly
"keep in the Hands of *my* Houſe 6000 *l.* Sterling, which on no Conſideration ſhall ever be reduced, and for which they are
"to be allowed no Intereſt. 6thly, That in Conſideration of the above Depoſite without Intereſt, the Houſe ſhall charge
"*Douglas, Heron*, and Company, no Commiſſion whatever, while the Amount of the Sum paid by them, whether by Bill
"or otherwiſe, does not exceed the Sum of 450,000 *l.* within the Space of One Year, or Twelve Calendar Months: But
"they ſhall pay a Commiſſion after the Rate of Two for every Hundred Pounds that ſhall be paid for them above
"the Sum of 450,000 *l.* within the Space of One Year. 7thly, All the Bills they draw ſhall be charged to their Account,
"at the Dates they become due without the Days of Grace, and they ſhall be allowed Intereſt by the Houſe in *London* at
"the Rate of 5 *per Cent.* for all the Monies they ſhall have lying in the Hands of the Houſe, over and above the Depoſit of
"6000 *l.* already mentioned. I am, &c."

This Letter is ſigned ANDREW GRANT, without any Mention of, or Reference to, the Name or *Firm* of the Houſe in which he was then a Partner; although from the Terms of this Letter, it ſeems intended to have been ſent to *Alexander Ferguſon*, yet by *John Fordyce's* Evidence it appears, that the Agreement was finally concluded between *Andrew Grant* and *Alexander Ferguſon* in the *Globe Tavern*, and that *Alexander Ferguſon* wrote his Anſwer to *Andrew Grant's* Letter, agreeing to the Propoſals thereby made by *Andrew Grant* for carrying on the Appellants Buſineſs in *London*, in *John Fordyce's* Preſence there, as he declares, (in Anſwer to a Queſtion put to him by the Appellants) "That being in *London* in Spring 1772, he was pre-
"ſent in the *Globe Tavern* with Mr. *Andrew Grant* and Mr. *Alexander Ferguſon* of *Craigdarroch*, then one of the Directors of
"*Douglas, Heron*, and Company, when they treated about and ſettled the Terms of an Account to be kept by Mr. *Andrew*
"*Grant* in *London* for the ſaid Company, as their Correſpondent in tranſacting Buſineſs in *London*, and which Agreement was
"then wrote and ſigned."

This Account is confirmed by *Alexander Ferguſon's* Anſwer to Mr. *Grant's* Letter, being of the ſame Date, and wrote on the ſame Sheet of Paper; it is addreſſed to Meſſrs. *Andrew Grant* and *Charles Ferguſon*, (who had ſubjoined to *Andrew Grant's* Letter a Propoſal to conduct a Part of the Buſineſs of *Douglas, Heron*, and Company, upon the ſame Terms propoſed by *Andrew Grant*,) and is as follows: "I am clearly of Opinion the Terms you propoſe to conduct the above Account for *Douglas*,
April, 1772. "*Heron*, and Company, are very reaſonable, and agree to the ſame on their Parts, which I have no Doubt will meet with
"their Approbation; and am, &c."

Alexander Ferguſon, immediately after this Tranſaction, ſet out for *Scotland*, and appears to have informed ſeveral of the Directors of the Appellants Company of the Agreement he had entered into with *Andrew Grant* on their Account, before he had any Opportunity of laying the Agreement before them at a regular Meeting of the Directors; and it appears likewiſe to have been ſuggeſted to him by thoſe Gentlemen, that it would be neceſſary for *Andrew Grant*, who was only ſetting out in Trade for himſelf, to give ſome of his Friends as Guarantees for his Tranſactions with their Company.—For it appears that

Alexander

Alexander Ferguſon applied to *John Fordyce*, and informed him of the Demand that would be made on *Andrew Grant* for Guarantees of his Tranſactions with the Appellants; and that *John Fordyce* replied, *That he was perſuaded* Andrew Grant *would have no Difficulty as to that Point, and offered himſelf to become one of the Securities.*

App. No. 4, 5, 6.

It is probable that *John Fordyce* at the ſame Time mentioned the Reſpondent as a Perſon that from his Relation would likewiſe be a Surety; for though no Propoſal was made to *Andrew Grant*, at entering into the Agreement at *London*, for giving any Guarantees whatſoever, and it is not pretended that any Correſpondence had been entered into with him, or Authority received from him, thereafter on that Subject, yet from the Evidence of *John Buſhby*, one of the Directors of the Bank, *Alexander Ferguſon* appears to have propoſed *John Fordyce* and the Reſpondent, as Guarantees for *Andrew Grant*, to a Meeting of the Directors of the Appellants Company, held in *May* 1772.

App. No. 5.

Alexander Ferguſon, *John Buſhby*, and *John Fordyce*, all agree in proving this Converſation between *Alexander Ferguſon* and *John Fordyce*; but they differ as to the Time of it: *John Fordyce* ſeems to underſtand it as having happened at *London*; but that is impoſſible, as no Propoſal was then made of any Guarantees. *Alexander Ferguſon* ſays, That it was after he had laid the Agreement entered into between him and *Andrew Grant* before a Meeting of the Directors of *Douglas*, *Heron*, and Company, at which Meeting a Guarantee was demanded from *Andrew Grant*, for his Tranſactions with the Company; but his Recollection ſeems to be very indiſtinct and inaccurate on this Subject, as he only ſays, he thinks he remembers ſuch a Converſation, and thinks he mentioned it to the Directors of *Douglas*, *Heron*, and Company:—But *John Buſhby* is more clear in his Recollection of this Circumſtance, and of the Time of it, as he declares, That in the End of *April*, or Beginning of *May*, 1772, Mr. *Ferguſon* informed him of the above Converſation mentioned in his Declaration, and further declares, "That he, "as one of the Directors of the ſaid banking Company, was preſent at a Meeting of Directors in *Edinburgh*, in *May* 1772, "when Mr. *Ferguſon* reported to them the Tranſaction he made with Mr. *Grant*, and of the Depoſit the Company were "to make of 6000 *l.* Sterling, Mr. *Ferguſon* did inform the Meeting, That Mr. *Fordyce* and the Purſuer, Mr. *Grant*, were "to be bound for the ſame; with which the Meeting was ſatisfied, as the Declarant underſtood." And further declares, "That it was underſtood at that Meeting, That ſuch Security was to be lodged before the Money was to be remitted to "Mr. *Grant* at *London*; and that ſeveral Enquiries have been ſince made both by Partners and Directors of the Bank, by "whoſe Authority the Remittances of the 6000 *l.* Sterling was made, before the Securities were lodged, and Reflections made "on that Account."

App. No. 5.

Upon the ſame Day that the aforeſaid Meeting of the Directors of the Appellants Company, as mentioned by *John Buſhby*, was held, *viz.* the 7th of *May*, *Alexander Ferguſon* wrote to *Andrew Grant*, acquainting him, That he had, of that Date, laid before the Directors of *Douglas*, *Heron*, and Company, the Agreement entered into with him upon the 20th of *April*, for the Purpoſe of negociating a Part of *Douglas*, *Heron*, and Company's Buſineſs in *London*; and that the Directors deſired him to acquaint *Andrew Grant* of their Approbation. *Alexander Ferguſon* adds, "As we are acting for a Number of other People, "and conſequently muſt be more ſcrupulous in our Tranſactions than if they were on our own Account, we hope you will "not look upon it in the leaſt Degree diſreſpectful to your Houſe, that we requeſt of you, at your Conveniency, to tranſmit "us a Letter of Guarantee from One or Two of your Friends, for your Tranſactions with *D. H.* and Co. &c." And this Letter is directed, To *Andrew Grant*, Eſq.

In the Beginning of *June* 1772, *Andrew Grant* informed the Reſpondent, who was acquainted with his Intention of ſeparating from *John Fordyce*, That he had entered into a Tranſaction with the Appellants, for himſelf, to take place after the Diſſolution of his then Partnerſhip; whereby he was to carry on a conſiderable Part of the Appellants Buſineſs in *London*, which would be of great Advantage to him, when ſetting out in Buſineſs for himſelf, by eſtabliſhing his Credit and enlarging his Connections: That, by his Agreement, 6000 *l.* of the Appellants Money was conditioned to lie in his Hands, which would likewiſe be of Uſe to him; but as Guarantees were demanded for Repayment of this Sum, he requeſted the Reſpondent to become One of them; and that before he ſet out for *Scotland* he would give him a Letter of Guarantee for this Purpoſe, that he might have it in his Power to enter upon the Management of the Appellants Buſineſs immediately upon his Separation from the Houſes of *Fordyce*, *Grant*, and *Fordyce*, *Malcolm*, and Company, an Event which would probably take place before the Reſpondent's Return, as it would be neceſſary for him at that Time to ſatisfy the Appellants reſpecting the Guarantee, before he entered upon the Management of their Buſineſs.

The Reſpondent was willing to ſupport his Brother when ſetting out in the World for himſelf; he thought he was in no Danger from his Brother's Situation, as he was able to ſeparate from the Partnerſhips he was then engaged with, and was willing to run the Riſque of his future Tranſactions, which were to be entirely under his own Conduct and for his ſole Benefit: With thoſe Views, on the 4th of *June* 1772, the very Day the Reſpondent ſet out for *Scotland*, he delivered to his Brother the following Letter, addreſſed To Mr. *Thomas Hogg*, Caſhier to *Douglas*, *Heron*, and Company: "Sir, As I learn from "*my* Brother, that *he* has entered into an Agreement with *Douglas*, *Heron*, and Company, by which 6000 *l.* of their Money "is to lie in his Hand, I hereby become Security for *him* to theſe Gentlemen for this Sum, and oblige myſelf that *he* ſhall "repay it to them, according to the Terms of *his* Agreement."—And it was underſtood between the Reſpondent and his Brother, *Andrew Grant*, that this Letter was to remain in *Andrew Grant*'s Hands, till the Diſſolution of the Partnerſhips in which he was then engaged.

4 June, 1772.

It appears, however, that this Letter was tranſmitted by *Andrew Grant* to *John Fordyce*, the Day he received it from the Reſpondent; and *Andrew Grant*, in his Letter to *John Fordyce*, ſays, "Incloſed is the Baron's Letter of Guarantee to *Dou-* "*glas*, *Heron*, and Company: I ſend it to you for your Approbation; you can, if you approve, make *K—g* deliver it."

The Letter did not come to *John Fordyce*'s Hands till the 22d of *June*, at a Time when both the Houſes of *Fordyce*, *Grant*, and Company, and *Fordyce*, *Malcolm*, and Company, had failed, in conſequence of the Failure of *Alexander Fordyce* of *London*, Banker (who, unfortunately for them, then owed the Houſe, and *John Fordyce* on his own Account, about 64,000 *l.* Sterling), and when the Effects belonging to thoſe different Partnerſhips, and to *John Fordyce*, were under Sequeſtration by Order of the Court of Seſſion in *Scotland*.

John Fordyce apprehending, that, from the Circumſtance of his being Bankrupt when he received the Letter, he neither was at Liberty to return or deliver it, put the Letter into the Cuſtody of Mr. *Dundas*, Solicitor-General for *Scotland*, to be kept for him and the Intereſt of all concerned.

Although it is evident, that *Alexander Ferguſon* muſt have reported to the Directors of the Appellants Company the Agreement he had entered into with *Andrew Grant*, as made with him for his own Behoof; although it is proved by *John Buſhby*'s Evidence, that *Alexander Ferguſon* did make his Report in this Manner; and although it is plain, that the Directors underſtood the Report in the ſame Light, as they agreed to accept of *John Fordyce* as one of the Guarantees for the Tranſactions that were to follow on this Agreement; YET, either from an Intention to open an Account with *Fordyce*, *Grant*, and Company, of the ſame Nature with that they had agreed to with *Andrew Grant* on his own Account, or from ſome Miſapprehenſion of their Clerks, or from ſome other Cauſe to the Reſpondent unknown, the Tranſaction was entered in the Company's Books as an Agreement made with *Fordyce*, *Grant*, and Company.

Accordingly Remittances were made to the Amount of the agreed Depoſit, and an Account of the ſame Nature opened with *Fordyce*, *Grant*, and Company, as that which *Alexander Ferguſon* had agreed for with *Andrew Grant* on his own Account; and after the Failure of *Fordyce*, *Grant*, and Company, the Appellants endeavoured to avail themſelves of the Reſpondent's Letter; and with that View brought an Action againſt him, and againſt *Fordyce*, *Grant*, and Company, concluding againſt them, jointly and ſeverally, for Payment of the Sum of 6000 *l.* with Intereſt, Exchange, and Commiſſion;—and their Summons or Declaration ſtates the 6000 *l.* to have been depoſited in the Hands of *Fordyce*, *Grant*, and Company, in conſequence of an Agreement with them, guaranteed by the Reſpondent's Letter.

Appellant's Action.

And

And on the Dependence of this Suit they thought proper to execute an Inhibition againſt the Reſpondent, a Diligence by which the Reſpondent's whole Property in that Country is lock'd up, in Security of what may in the End be decreed againſt him.

The Reſpondent, on the other hand, brought an Action againſt Mr. Solicitor *Dundas* (to which he made the Appellants Parties), concluding for Exhibition and Delivery of his aforeſaid Letter of Guarantee.

Thoſe Actions were conjoined; and having come in Courſe before Lord *Auchinleck* Ordinary, the Reſpondent applied to him for Leave to examine Witneſſes, particularly ſome of the Directors of the Appellants Company, that the Nature of the Tranſaction (to which he himſelf was entirely a Stranger) might be aſcertained.—Accordingly *Alexander Ferguſon* and *John Buſhby* were examined on the Part of the Reſpondent; and *John Fordyce* was likewiſe examined with regard to the Letter he received from *Andrew Grant*; and as to other Matters, he was examined by the Appellants, the Reſpondent not being intitled either to examine him or *Andrew Grant* as to other Matters, as they were Defenders in the Cauſe.—And in order to obtain a full Diſcovery of the real Truth, (with which he was too little acquainted to be able to put all the proper Queſtions to the Witneſſes) he added to the Interrogatories on which they were both examined the following Requeſt: "Theſe are the "few Queſtions that occur to Mr. Baron *Grant*, as proper to be put to Mr. *Ferguſon*; but as he is a Stranger to this Affair, "though deeply intereſted in it, he muſt beg Mr. *Ferguſon* will explain it fully, and produce what Papers and Letters he is "poſſeſſed of, which can throw Light on it, that material Juſtice may be done to all Parties."—*Alexander Ferguſon* was allowed to carry thoſe Interrogatories home with him, and ſent his Anſwers with his Conveniency.—*John Buſhby* likewiſe wrote his Anſwers by himſelf; ſo that the Reſpondent has done every Thing in his Power to obtain a full and impartial Diſcovery of the Facts relative to this Matter.

Reſpondent's Defences.

The Proof being cloſed, the Cauſe was taken to report upon Informations; and the Defences made by the Reſpondent to the Appellants Action were Two:—*Firſt*, That the Letter, upon which the Appellants brought their Action, is only applicable to a Depoſit to be made with the Reſpondent's Brother *Andrew Grant*, and not to any Tranſactions which might paſs between *Douglas*, *Heron*, and Company, and *Fordyce*, *Grant*, and Company.—*2dly*, That this Letter cannot create any Obligation upon the Reſpondent, nor be the Foundation of an Action againſt him, as it never was delivered nor promiſed, nor had any Money advanced upon the Credit of it; and as it did not even reach *John Fordyce*, to whom it had been tranſmitted for determining on the Propriety of the Delivery, till after the Bankruptcy of the Perſon whoſe Acts it was intended to guarantee.

Anſwer for the Appellant —— to the Defence.

The Appellants, in Anſwer to the *firſt* Defence, pleaded, That the Reſpondent's Letter of Guarantee, referring to an Agreement entered into between *Andrew Grant* and the Appellants, neceſſarily imports, that the Reſpondent was acquainted with the Terms of that Agreement, to which by his Letter he became an acceſſary Obligee, and, of conſequence, that he is bound by this Agreement.

That the State of the Appellants Affairs in Spring 1772 requiring Accounts to be immediately opened with Two mercantile Houſes in *London*, in order to negociate Bills, and carry on a Circulation neceſſary for them at that Time, they ſent *Alexander Ferguſon* to *London* for that Purpoſe.

That *Alexander Ferguſon* choſe the Houſes of *Fordyce*, *Grant*, and Company, and of *Charles Ferguſon*, as Correſpondents for the Appellants: That he had many Converſations on this Subject with *John Fordyce*, *Andrew Grant*, and *Charles Ferguſon*, in which Terms of an Agreement were ſettled between the Parties, and reduced into Writing, by the above-mentioned Letter from *Andrew Grant* to *Alexander Ferguſon*, of the 20th of *April* 1772; *Charles Ferguſon*'s Propoſal annexed to it, and *Alexander Ferguſon*'s Agreement to both, all wrote on the ſame Sheet of Paper, as already ſtated.

That the Agreement wrote by *Andrew Grant* could apply to nothing elſe but the Houſe of *Fordyce*, *Grant*, and Company, as through the whole of it *Andrew Grant* uſes the Expreſſion of *a Houſe*, which is not applicable to *a ſingle Merchant*, and talks of *ſuch Houſe* as then exiſting in *London*, in which he was concerned; whereas the only Houſe in *London* in which *Andrew Grant* was concerned, was that of *Fordyce*, *Grant*, and Company; and his calling it *my Houſe*, though only ſecond Partner in it, could have no Influence on the Interpretation to be put upon the Letter, as the Manner in which Merchants name the Houſes in which they are concerned depend greatly on the Way of Thinking and Manner of Expreſſion of the Perſon that writes. There were Inſtances in Practice of Merchants referring to the Houſes of which they were Partners by every Mode of Expreſſion.

That *Andrew Grant*'s being only Second Partner, could have no Influence on the Queſtion, as *John Fordyce*, the Firſt Partner, had taken little active Concern in the Management of the Buſineſs of that Houſe from the Time that he was appointed Receiver-General of *Scotland*; by which Means *Andrew Grant*, who reſided in *London*, became the active Partner of this Houſe, conſidered himſelf to be at the Head of it, talked of the Houſe as *his*, and in that Character made the preſent Agreement, which muſt be conſidered as entered into with *Fordyce*, *Grant*, and Company.

That *Alexander Ferguſon* underſtood the Agreement in this Light, as he reported it to the Directors of the Appellants Company to have been entered into with *Fordyce*, *Grant*, and Company; and thoſe Directors, of courſe, entertained the ſame Opinion of it, as appears from the Minute they entered of *Alexander Ferguſon*'s Report in their Books, of this Agreement's having been made with *Fordyce*, *Grant*, and Company.

That *Alexander Ferguſon*'s Letter of the 7th of *May*, the Date of this Minute, in which he informs *Andrew Grant* of the Agreement's being approved of by the Directors of the Appellants Company, confirms this Interpretation of the Agreement, as he writes, "That Bills to the Amount of the Depoſite, to be kept with your Houſe for tranſacting the Buſineſs of *Douglas*, "*Heron*, and Company, free of Commiſſion, will be tranſmitted you in the Courſe of a few Poſts."

That *Andrew Grant* conſidered the Agreement in the ſame Light, as by his Letter to *Alexander Ferguſon* of the 14th, he writes, "I have received your Favours of the 7th and 9th Inſtant, and by the Firſt I obſerve that *Douglas*, *Heron*, and "Company, have confirmed the Agreement you made with me, for carrying on Part of their Buſineſs. I ſhall ſend a Letter "of Guarantee for that Depoſite in a few Days."——And by another Letter of the 4th of *June*, wrote by *Andrew Grant*'s own Hand, and ſigned with the Firm of *Fordyce*, *Grant*, and Company, he ſays, "This completes the Amount of the Depoſite "in Terms of our Agreement."

And that of the ſame Date, (in which *Andrew Grant* acknowledged the Receipt of the full Depoſite) he tranſmitted the Reſpondent's Letter of Gurantee to his Partner *John Fordyce* for his Approbation, with Powers to make *K——g* deliver it if he approved of that Meaſure.—From all which the Appellants coucluded, that it was clear the Agreement was intended to be entered into with Meſſrs *Fordyce*, *Grant*, and Company.

It was further pleaded for the Appellants, That no Weight ought to be laid on the Parole Evidence brought by the Reſpondent, in regard theſe were only Declarations, and not Examinations on Oath, and had been taken *ex parte* in Abſence of the Appellants.

That the Circumſtance proved by *Alexander Ferguſon*'s Declaration, of his having been acquainted with the Intention of putting an End to the Copartnery of *Fordyce*, *Grant*, and Company, and eſtabliſhing *Andrew Grant* upon a reſpectable Footing of Credit on his own Account, was of no Importance, as the Tranſactions there referred to happened a Year before the Period in queſtion, and not having been carried into Execution, loſt a great Deal of the Force of the Evidence, as applying to that Time, of ſuch an Intention; and that the Fact proved by all the Witneſſes, of *John Fordyce*'s having been propoſed and accepted of, by the Directors of the Appellants Company, as One of the Gurantees for the Depoſite which was to be made,

could

could have no Effect on the Conſtruction of the Original Bargain, as this appears from Mr. *Ferguſon's* Evidence to have happened long after the Bargain had been finiſhed, and underſtood by all Parties to have been entered into with *Fordyce, Grant,* and Company.

That at any rate it was not incongruous to take a Letter of Gurantee from *a particular Partner* for the Tranſactions of *a Company* wherein he is concerned, as many Effects may follow from ſuch an Obligation which could not be obtained without it. Arreſtments and Inhibitions againſt his private Eſtate may be uſed, and Executions of all Sorts follow more readily, than if no ſuch cautionary Obligation were taken.

App. No.

Appellant's Anſwer to Second Defence.

On the Queſtion ariſing from the ſecond Defence, it was contended for the Appellants, That *Andrew Grant* having, by his Letter of the 14th of *May*, promiſed to comply with the Appellants Requeſt of a Guarantee for the Depoſite to be made him, by ſending a Letter for that Purpoſe in a few Days, and the whole Sum agreed to be depoſited having been advanced, on the Faith of ſuch Promiſe, *Andrew Grant* became thereby bound to obtain for and ſend to the Appellants, a Letter of Guarantee for this Depoſite; wherefore having obtained the Reſpondent's Letter of Guarantee, he was bound to tranſmit it to the Appellants. And the Reſpondent, by delivering the Letter in queſtion to *Andrew Grant*, muſt have been preſumed to have delivered it to him as repreſenting the Appellants and for their Behoof, as otherwiſe the Reſpondent muſt have tranſmitted the Letter to the Appellants themſelves, or granted them a Letter to that Purpoſe when he arrived in *Scotland*, for which Place he was then ſetting out; and they referred to a Caſe reported by Lord *Fountainhall*, Vol. I. Page 394, *January* 20, 1686, Colonel *Borthwick* contra *Thomas Lawrie*, Merchant in *Edinburgh*, "The Lords ſuſtained the Delivery of a Paper, though "not to the Party, but to another for his Behoof, though he knew nothing of it, and ſo could not accept it."

App. No.

That the Arguments for the Appellants were ſtill ſtronger, in regard *Andrew Grant* had tranſmitted the Letter to his Partner *John Fordyce*, and deſired him, if he approved, to make Mr. *K—g* deliver it, as the Condition of the Order to *John Fordyce* to deliver it, did not entitle him to diſapprove of this Step, but only to judge whether the Letter was conceived in proper Terms, and his diſapproving of the Terms would only have produced a more ample Letter of Guarantee; wherefore, as the Depoſite for which this Letter was granted had been advanced, *John Fordyce* was bound, and could have been obliged to have delivered the Letter to the Appellants, and the Delivery of it to him is to be conſidered as a Delivery to them.

Reſpondent's Reply.

On the other hand, it was pleaded for the Reſpondent, in Anſwer to the above Arguments, on the *firſt Defence*,——That the Evidence brought by the Reſpondent in this Cauſe, was the Declarations of *Alexander Ferguſon* and *John Buſhby*, the moſt unexceptionable Witneſſes that could be adduced, being the very Parties againſt him in this Cauſe, not only intereſted in the Iſſue of the Cauſe as much as any of the Appellants, but employed by them, as Directors of the Company, on account of their Knowledge and Fidelity; particularly *Alexander Ferguſon*, who, on thoſe Accounts, had been employed to conduct this whole Affair, and was, of conſequence, a neceſſary Witneſs with regard to any Queſtion concerning it, and they were the only Perſons to whom the Reſpondent could apply for explaining the Nature of this Tranſaction, as he was deprived of the Evidence of his Brother *Andrew Grant*, and of *John Fordyce*, from their having been made Parties to the Cauſe: But if there had been any Doubt of the Facts eſtabliſhed by thoſe Witneſſes, the Appellants had it in their Power to explain them, by calling *Andrew Grant* and *John Fordyce* themſelves for that Purpoſe, and by calling their Clerks and other Perſons preſent for aſcertaining what is proved to have paſſed at the Meeting of their Directors.

App. No. 2.

App. No. 5.

That thoſe Gentlemen were examined in the ſame Manner as by the Law and Practice of *Scotland* all Parties are in every Caſe, by taking their Declarations in place of their Oaths, nor was there ever an Objection before made, that the Declaration of a Party againſt himſelf was not legal Evidence, becauſe it had not been given upon Oath, and the Objection of a Party being examined *ex parte* is equally abſurd, more eſpecially, as the Two Directors examined, wrote their Declarations by themſelves, in conſequence of a Requiſition in Writing from the Reſpondent to explain the whole Tranſaction.

That the only other Teſtimony with regard to the Merits of the Cauſe was given by *John Fordyce*; and that it was entirely agreeable to the Declarations of the other Witneſſes, and proceeded on a Queſtion put to him by the Agent of the Appellants, and they did not object to his Evidence.

That from the whole Evidence and Writings produced in this Cauſe, it was clearly proved, that it had been fully reſolved and determined between *John Fordyce* and *Andrew Grant*, in the Year 1771, to diſſolve their Partnerſhip: That this did not continue a naked Reſolution, but had actually been carried ſo far into Execution as Credits were got for the opening of Accounts with different Houſes in the Name of *Andrew Grant* ſolely, and to no leſs an Amount (by *Alexander Ferguſon's* Evidence) than 32,000 *l.* or 35,000 *l.*

That *Alexander Ferguſon* was intimately acquainted with this Plan, and with its having been ſo far carried into Execution; for it appears from his Evidence, that thoſe Accounts had been ſettled for *Andrew Grant* in conſequence of his own Advice, that he introduced *John Fordyce* to the Houſes of *Kelby* and *Syme*, and *Mayne* and *Needham*, for this very Purpoſe, and knew that thoſe Accounts had, in conſequence of ſuch Introduction, been agreed to.

That *Alexander Ferguſon*, who was all along conſulted in this Affair, does not hint that he had the ſmalleſt Suſpicion of *John Fordyce* and *Andrew Grant* having changed their Intention; on the contrary, *John Fordyce*, when he declares that he offered himſelf to *Alexander Ferguſon* as one of the Securities for *Andrew Grant*, gives this Reaſon for it, *having mentioned formerly to Mr.* Ferguſon, *and it being known and underſtood by him, that he, the Declarant, was to go out of the Houſe.*

That the Diſſolution of a Partnerſhip which had been ſo long and ſo largely concerned in Buſineſs as the Houſe of *Fordyce, Grant,* and Company had been, could not be brought about in the Nature of Things in a ſhort Time; and therefore, *Alexander Ferguſon*, when he was employed in Spring 1772, to ſettle Accounts with different Houſes for carrying on the Appellants Buſineſs in *London*, behoved to know that the Houſes of *Fordyce, Grant,* and *Fordyce, Malcolm,* and Company, were on the Eve of being diſſolved; and it would have been the greateſt Inconſiſtency in him, in that Situation, to have employed *Fordyce, Grant,* and Company, who were immediately to give over Buſineſs, as Correſpondents for the Appellants.

That the only Agreement, therefore, that *Alexander Ferguſon* could be ſuppoſed to enter into with *Andrew Grant*, behoved to be with him on his own Account, after the Diſſolution of his then Partnerſhips; and the Agreement actually entered into between *Andrew Grant* and *Alexander Ferguſon* clearly appears to be of this Nature, as it is wrote by *Andrew Grant*, and ſigned by his *own Name*, and *not* by the *Name* or *Firm* of *Fordyce, Grant, and Company.*—That the only Reaſon why Companies aſſumed particular *Names* or *Firms* is to facilitate Buſineſs, that by the Uſe of ſuch particular *Name* or *Firm* any one of the Partners may enter into ſuch Engagements or Covenants as are meant to bind the whole Company, without any Occaſion for the Concurrence of the other Partners: On the other hand, when a Partner uſes his own Name ſingly and by itſelf, that Circumſtance as fully expreſſes his Meaning to be, that thereby he only binds himſelf perſonally, and not the Company of which he is a Partner, as if he had inſerted a particular Clauſe in the Deed for that Purpoſe.—That no Perſon in a Contract of that Importance could ſign his own Name for that of the Company by a Miſtake; and if he had done ſo, his Subſcription could have no more Effect with regard to the Company, whoſe Name he had not ſigned, than if he had neglected to ſign the Deed altogether. That it is for a certain determined Purpoſe that a Perſon, accuſtomed to tranſact Buſineſs for, and ſign the Name or *Firm* of a Company, ſigns his own Name; and in the preſent Caſe there can be no other Reaſon aſſigned for this, than that *Andrew Grant* did not mean to contract for, or bind *Fordyce, Grant,* and Company, but only himſelf.

That the Truth of this is further aſcertained by the Tenor of *Andrew Grant's* Letter, as through the whole of it he makes uſe of the Terms *himſelf*, and *his Houſe*, inſtead of the Name of *Fordyce, Grant, and Company*, the Houſe whereof he was then a Partner, which plainly ſhews that it was not intended by the Parties, that *Fordyce, Grant,* and Company ſhould have any

any Concern in this Affair; and this muſt have the greater Weight in explaining *Andrew Grant*'s Intentions, as in no Light whatſoever he could, even in common Parlance, deſign *Fordyce, Grant*, and Company in this Manner, as he was only Second Partner in that Houſe, and concerned only for a Third Share in it.

App. No. 6. That this is ſtill ſtronger, as it is proved by *John Fordyce*, the eldeſt Partner of this Houſe, and is not controverted by the Appellants, That he was preſent when this Agreement was entered into; as it is incredible, and againſt the Nature of Things, that a younger Partner ſhould enter into a Contract of this Importance as for himſelf and his Houſe, and ſign it with his own Name, in Preſence of the Firſt Partner of the Houſe engaged in the ſame Negociation, without taking any Notice of the Houſe for whom it was made, or ſigning the *Firm* or *Name* of that Houſe, or even adhibiting the Firſt Partner's Subſcription to the Contract.

App. No. 6. That the Evidence of *John Fordyce* aſcertains the Truth of this Reaſoning ſtill farther, and clearly proves the Fact to have been ſo, as he declares; "That being in *London* in Spring 1772, he was preſent in the *Globe Tavern* with Mr. *Andrew* "*Grant* and Mr. *Alexander Ferguſon* of *Craigdarroch*, then one of the Directors of *Douglas, Heron*, and Company, when "they treated about, and ſettled the Terms of an Account to be kept by Mr. *Andrew Grant* in *London*, for the ſaid Company, "as their Correſpondent in tranſacting Buſineſs in *London*, and which Agreement was then wrote and ſigned:"—which Account of the Tranſaction does not ſtand in need of any Explanation.

That the Pretence uſed by the Appellants to account for all this by *Andrew Grant*'s being the active Partner of *Fordyce, Grant*, and Company, who managed their Buſineſs, and then reſided in *London* for that Purpoſe, and that *John Fordyce* never interfered in the Management of the Buſineſs, after being appointed Receiver-General for *Scotland*, is not true; and, if it were ſo, could have no Influence in taking off the Weight of thoſe Circumſtances: That *Andrew Grant*'s Reſidence was at that Time in *Scotland*, where his Family were then actually ſettled; and that he was then only caſually at *London*, as Mr. *Fordyce* himſelf likewiſe was: That the immediate Care of the Buſineſs of *Fordyce, Grant*, and Company, was then in the Management of Mr. *Tretter*; and that Mr. *Fordyce* was ſo far from giving no Attention to his own Buſineſs, that from the whole Evidence he appears to have been anxiouſly employed even for obtaining Credits for *Andrew Grant*, and ſettling Contracts for him, which were to take Effect upon the Diſſolution of their then Partnerſhip.

That this Agreement was not only underſtood by all the Parties concerned when it was made, to have been entered into with *Andrew Grant* on his own Account, but it appears from the Evidence to have been reported by *Alexander Ferguſon* to the Directors of the Appellants Company in *Edinburgh*, and to have been approved of and underſtood by them in the ſame
App. No. 2. Light; for *Alexander Ferguſon* declares, That he reported the Agreement which he had entered into with Mr. *Andrew Grant*,
App. No. 5. for conducting a Part of the Buſineſs of *Douglas, Heron*, and Company, (of which he thinks the Agreement above recited a juſt Copy) to the Directors of *Douglas, Heron*, and Company. And *John Buſhby* declares, "That he was preſent at a "Meeting of Directors in *Edinburgh*, in *May* 1772, when Mr. *Ferguſon* reported to them the Tranſaction he made with Mr. "*Grant*, and the Depoſite the Company were to make of 6000 *l.* Sterling."

That it is evident all Parties conſidered this Tranſaction as made with *Andrew Grant* on his own Account, and that the Directors of the Appellants Company, at the above Meeting, approved of it in that Light, as *Alexander Ferguſon, John Buſhby*, and *John Fordyce*, all concur in proving, that *John Fordyce* offered to *Alexander Ferguſon* to become one of *Andrew Grant*'s Guarantees for the Tranſactions to follow on this Agreement.—*Alexander Ferguſon* declares, that he thinks he mentioned *John Fordyce*'s Offer to a Meeting of the Directors of *Douglas, Heron*, and Company; and *John Buſhby* declares, That at the ſame Meeting where *Alexander Ferguſon* reported the Tranſaction which he had made with *Andrew Grant*, and the Depoſite *Douglas, Heron*, and Company, were to make of 6000 *l.* Sterling, *Mr.* Ferguſon *did inform the Meeting, That Mr.* Fordyce *and the Purſuer, Mr.* Grant, *were to be bound for the ſame, with which the Meeting was ſatisfied, as the Declarant underſtood.*

That it is evident, from *John Buſhby*'s Declaration, that this happened at the ſame Meeting where *Alexander Ferguſon* made his Report of the Agreement he had entered into with *Andrew Grant*; but that it would not alter the Caſe, nor change the Conſequences of this Fact, if it were allowed that this happened at an after Meeting of the Directors of the Appellants Company, which ſeems to be affirmed by *Alexander Ferguſon*, in his Declaration, and is pleaded by the Appellants; for from *John Buſhby*'s Declaration, and the Circumſtances of the Caſe, this muſt at any rate have happened in the Courſe of the Month of *May*, within a Week, Two, or Three, of the Report of this Agreement made by *Alexander Ferguſon*; and *John Fordyce*'s Offer, (who was intimately acquainted with the Circumſtances of this Tranſaction from firſt to laſt) proves with equal or greater Strength, that he underſtood the Bargain, when finiſhed, to have been concluded with *Andrew Grant* alone, and not with himſelf, as the Firſt Partner of *Fordyce, Grant*, and Company: And the Directors of the Appellants Company accepting this Offer, proves, equally clearly, that they entertained the ſame Opinion of the Agreement, after they had conſidered it maturely, and had even tranſmitted all, or a conſiderable Part of the Depoſite, to *Fordyce, Grant*, and Company.

That the accepting of *John Fordyce* as One of the Guarantees for Performance of this Agreement, is not only incongruous, but even incompatible with his having been conſidered as a Party to it; for by the Laws of *Scotland*, a Partner of any Company is equally liable, and to as great an Extent, for the Debts and Deeds of ſuch Company, as if they were his own private Contractions or Obligations, and every Kind of Diligence or Execution, proceeds with equal Facility againſt him in the one Caſe, as in the other.

That the Appellants Argument on this Point infers, that the Directors of their Company, when they demanded Guarantees for this Agreement, did not mean to enlarge their Security, but only to provide for ſpeedy Execution againſt the Parties already bound to them; nay, that they only meant to obtain this Advantage againſt *John Fordyce*, one of the Partners, not againſt *Andrew Grant*, who, according to their Argument, only remained bound in the ſame Manner as all Partners are for a Company Tranſaction, all which is incredible.

That the only Circumſtances which had any Tendency to ſhow an Intention in the Appellants to carry on a Tranſaction of this Sort with *Fordyce, Grant*, and Company, was the Entry in their Books of the Agreement, as with *Fordyce, Grant*, and Company; and the remitting the Depoſite to *Fordyce, Grant*, and Company, which muſt have proceeded from their intending a Tranſaction of the ſame Nature with *Fordyce, Grant*, and Company, until *Fordyce* and *Grant* ſhould ſeparate; or from ſome Miſunderſtanding or Confuſion with the Clerks or Managers of the Company, who, it is believed, often tranſacted Buſineſs with too little Attention; or from ſome other Cauſe unknown to the Reſpondent.

That in order to diſcover, if poſſible, the Meaning of the Appellants, or rather of their Servants, in ſtating the Tranſaction as made with *Fordyce, Grant*, and Company, the Reſpondent obtained a Copy from the Books of *Fordyce, Malcolm*, and Company, of the Appellants Tranſactions with them for a Year preceding the Date of this Agreement; as the Houſe of *Fordyce, Malcolm*, and Company, though ſettled in *Scotland*, and paſſing under a different Name, was really the ſame, and conſiſted of the ſame Partners (intitled to the ſame Shares of the Trade) as the Houſe of *Fordyce, Grant*, and Company; and by this Account it appears, that from the 10th of *June* 1771, to the 9th of *June* 1772, the Appellants had purchaſed from *Fordyce, Malcolm*, and Company, Bills on *London* to the Amount of 130,524 *l.* 10 *s.* 4 *d.* whereof 55,572 *l.* 12 *s.* 6 *d.* were Bills drawn on *Fordyce, Grant*, and Company.—That during this Period, *Fordyce, Malcolm*, and Company, purchaſed from the Appellants Bills on *London* to the Amount of 83,724 *l.*; and that on the 7th of *May*, when the above Agreement between *Alexander Ferguſon* and *Andrew Grant* was approved of by the Directors of the Appellants Company, the Appellants were poſſeſſed of Bills drawn by *Fordyce, Malcolm*, and Company, on *Fordyce, Grant*, and Company, ſtill running and unpaid, for 18,100 *l.*; and from this Diſcovery the Reſpondent contended, That, at the Date of this Agreement, ſuch implicit mutual Confidence ſubſiſted between the Appellants and the Houſes of *Fordyce, Grant*, and *Fordyce, Malcolm*, and Company; and they carried on ſo large Money Tranſactions with each other, without aſking any Securities from one another, that it is impoſſible to believe, if the above Agreement had been conſidered as entered into between the Appellants and *Fordyce*,

dyce, Grant, and Company, that the Appellants would have thought of demanding any Guarantee from *Fordyce, Grant,* and Company, for their Tranſactions with them in conſequence of it, far leſs for ſo trifling a Sum, in compariſon to their former Concerns, as a Depoſite of 6000 *l.*—or to believe, that ſuch a Propoſal, if made, would have been liſtened to by *Fordyce, Grant,* and Company.

That the Truth of this Obſervation is further aſcertained, and the Improbability of ſuch a Demand being made, eſtabliſhed, by its appearing, from this Account, that when the Appellants opened an Account with *Fordyce, Grant,* and Company, of the ſame Nature with that they had agreed for with *Andrew Grant,* although they advanced the Depoſite of 6000 *l.* to *Fordyce, Grant,* and Company, YET *this Advance* was only *nominal,* as they were ſo far from thereby increaſing the Debt due
App. No. 8. them by *Fordyce, Grant,* and *Company,* that they were enabled by this Account to reduce it from 18,100 *l.* which it was on the 7th of *May,* the Date of this Agreement, ſo early as the 30th of the ſame Month, to 9650 *l.* which added to the 6000 *l.* of Depoſite, makes the whole Debt due them by *Fordyce, Grant,* and Company, at that Time, amount to 15,650 *l.* ſo that there could be no Reaſon for demanding a Guarantee from *Fordyce, Grant,* and Company, for their Tranſactions in conſequence of an Agreement, between the Date of which and the Time of the ſuppoſed Demand, the Debt due to the Appellants, inſtead of increaſing, had then been conſiderably reduced.

That the Fact, from the whole Circumſtances of the Caſe, appears to have been, That at this Period the Appellants had been obliged, from the Neceſſities of their own Situation, to carry on thoſe large Money Tranſactions with *Fordyce, Grant,* and *Fordyce, Malcolm,* and Company, to ſupport themſelves. That after entering into the Agreement with Mr. *Grant,* they could not diſcontinue thoſe Tranſactions, 'till he was enabled to carry on Buſineſs in his own Name; and being obliged to carry on Buſineſs, as formerly, with *Fordyce, Grant,* and Company, they choſe rather to do it on the Terms they had agreed on with Mr. *Grant,* by which they paid only about $\frac{1}{17}$ *per Cent.* of Commiſſion, inſtead of carrying it on as formerly at the Expence of about $\frac{1}{4}$ *per Cent.* of Commiſſion; and to entitle them to do this, the Appellants Directors ſeem to have entered the above Agreement in their Books as made with *Fordyce, Grant,* and Company, (though every Circumſtance in this Caſe clearly proves they themſelves knew the Fact to be otherwiſe) in order to intitle them to do this regularly, but they had no Intention of making any Demand on *Fordyce, Grant,* and Company, for a Guarantee from them for their Tranſactions on this Account, but only from *Andrew Grant,* in View to that Period when the Account ſhould be transferred to his Name ſingly, in conſequence of the only Agreement that was made betwixt him and *Alexander Ferguſon,* which alone could be reported to, and had been approved of by them; and this is the more likely to have been the Intention of Parties, that it accounts for a Conduct which, in every other Light, is inconſiſtent and incomprehenſible.

That the Obligation of every Surety to guarantee the Tranſactions of another Perſon, ariſes only from the Deed by which he has bound himſelf for that Purpoſe, and by the Principles of the Law of every Country ſuch Deed is to be ſtrictly interpreted, nay, even favourably for the Surety; nor can his Obligation be extended beyond the expreſs Words of the Deed by which he is bound.

That in order to conclude againſt the Reſpondent for Re-payment of this Depoſite in Terms of his Letter, the Appellants muſt prove that every Circumſtance mentioned in it, as the Cauſe and Condition of the Obligation, have been fulfilled. That an Agreement of the Nature of that mentioned in the Letter, had been entered into between the Appellants and *Andrew Grant,* for himſelf, previous to the Date of the Letter, and that the Money had been advanced to him on his own Account, and to lie in his Hands in Terms of it.

That the Appellants *Summons,* or Declaration, the Entry they have produced from their Books, and their uniform Averment that the Agreement in queſtion was entered into by *Andrew Grant* with their Company, not for himſelf, but for *Fordyce, Grant,* and Company: That the Money was advanced not to *Andrew Grant* for himſelf, or to lie in his Hands, but to *Fordyce, Grant,* and Company, to lie in their Hands, made their Plea untenable: For the Reſpondent never entered into any Obligation, or granted any Guarantee whatſoever, for any Agreement between the Appellants and *Fordyce, Grant,* and Company, or for the the Repayment of Money to be advanced to them to lie in their Hands; and although the Reſpondent's Brother might have entered into ſuch an Agreement, and have been concerned in it as a Partner of the above Company, yet this did not make that an Agreement properly with him, nor could ſuch an Agreement be conſidered to come under the Terms, or be meant by the Deſcription of the Agreement which the Reſpondent's Letter guarantees.

And the Appellants had no Reaſon to complain of this Conſtruction as a Hardſhip, becauſe it was not on Account or in Contemplation of the Reſpondent's Guarantee that they had advanced the Money in queſtion: That a great Part of the Depoſite was tranſmitted to *Fordyce, Grant,* and Company, before *Andrew Grant*'s Letter promiſing any Guarantee whatever, and that he never promiſed the Reſpondent's Guarantee to the Appellants.

Reply—as to the ſecond Defence.

On the SECOND DEFENCE againſt this Action, That the Letter of Guarantee never was delivered to the Appellants, and conſequently could create no Obligation on the Reſpondent, nor be the Foundation of any Action againſt him; it was anſwered by the Reſpondent:

That it is an agreed Fact between the Parties, that the Letter of Guarantee never was actually delivered to the Appellants; it was left by the Reſpondent when ſetting out for *Scotland* with his Brother, to be uſed by him when the Event for which it was granted took place; it was tranſmitted by *Andrew Grant* to his Brother-in-Law, and Partner, *John Fordyce,* to be delivered when he ſhould approve of it; and *Andrew Grant, John Fordyce,* and the *Houſes* to which they belonged, having failed before the Letter came to *John Fordyce*'s Hands, he delivered it to Mr. Solicitor *Dundas,* for Preſervation, in the ſame State as if it had continued in his own Hands. That the Reſpondent's giving the Letter to *Andrew Grant,* on his ſetting out for *Scotland,* could not be conſidered a *Delivery* (either by *Intention* or in *Fact*) to the Appellants; for if the Reſpondent had known that a Depoſite was made to *Fordyce, Grant,* and Company, and had meant to guarantee that Depoſite by his Letter, he muſt have tranſmitted the Letter inſtantly to the Appellants, or, as he was ſetting out for *Edinburgh,* ſettled and granted them a Letter for that Purpoſe when he arrived there; and the only Reaſon that could be aſſigned for his leaving this Letter in his Brother's Hands, muſt be, that it was granted to anſwer an Event which had not then happened, but which might probably take place before his Return to *London.*

That by the Agreement made with *Alexander Ferguſon, Andrew Grant* was under no Obligation whatſoever to procure or deliver to the Appellants a Letter of Guarantee for the Depoſite, either to be made to himſelf, or to *Fordyce, Grant,* and Company: There is no Mention made of a Guarantee in the original Agreement; and the Demand made of One by *Alexander Ferguſon,* in his Letter of 7th *May,* is for the whole Tranſaction, amounting by the Agreement to 450,000 *l.* annually; and although *Andrew Grant,* in his Letter of 14th *May,* ſays, that he was to ſend a Letter of Guarantee for the Depoſite of 6000 *l.* yet that was never accepted of, and never could be underſtood, or held for Implement of the Demand made in Mr. *Ferguſon*'s Letter; and conſequently the Appellants cannot be enabled to demand Delivery of the Reſpondent's Letter, or maintain any Action upon it.

That although *Andrew Grant* had come under ſuch Obligation, it would not have altered the Caſe in the preſent Queſtion, nor made the Delivery of the Letter of Guarantee to *Andrew Grant* a Delivery to the Appellants. The *Delivery* of a Deed is the *Act* of the *Grantor,* and depends upon his *Intention,* not upon the *Obligations* or *Intentions* of the *Receiver:* The Reſpondent by giving this Deed to *Andrew Grant,* to be delivered to the Appellants, when the Situation of the Parties made it proper, conſtituted *Andrew Grant* his Attorney for that Purpoſe; and as the Deed and Commiſſion were both voluntary, they were alterable at Pleaſure, and the Reſpondent had a Right to recal this Commiſſion and take back his Letter of Guarantee whenever he pleaſed, ſo long as it remained undelivered, and nothing had followed upon it; and no Act of *Andrew Grant,* but actual Delivery, could prevent the Reſpondent from recalling the Letter and ſtopping *Delivery.*

That

That the Caſe cited by the Appellants from Lord *Fountainhall*, made againſt, inſtead of ſupporting their Argument, as it proves, that the Nature and Effect of the *Delivery* of any Deed does not depend on the Obligations or Intentions of the Party who receives it, but on the Intentions of the Grantor who delivers it: The Reſpondent never denied that the Grantor of a Deed might deliver the ſame to a third Perſon, for the Behoof of the Perſon in favour of whom the Deed was conceived, when his Intentions were clear, by ſuch Delivery, to make it a complete and effectual Obligation; but ſuch Intention muſt be clearly proven in order to have this Effect, and in the preſent Caſe every Circumſtance ſhows that the Letter in queſtion was not delivered to *Andrew Grant* for this Purpoſe; nay, that it was given him to remain in his Poſſeſſion till the Situation of Parties made it proper for him to deliver it.

That it was therefore plain that the Reſpondent's giving this Letter to his Brother, in order to be delivered to the Appellants when his Partnerſhip was diſſolved, can in no Light, even according to the Appellants' own Arguments, or the Facts as ſtated by themſelves, be conſtrued into a Delivery of it to the Appellants, ſo as to make it a complete Obligation by Delivery.

That though *Andrew Grant* diſcovered his Confidence in *John Fordyce*, his Brother-in-Law, by leaving the Power of judging of the Propriety of this Letter of Guarantee, and of the Time of delivering it, to his Diſcretion, yet he could not intend thereby that the Letter ſhould, in any Event, be delivered immediately. If that had been his Deſign, he would have tranſmitted it directly to the Appellants, to whom *Fordyce*, *Grant*, and Company, wrote that very Night. He could not mean that this Letter ſhould be delivered before the Appellants agreed to accept of it, as the full Guarantee they intended to demand, in conſequence of their Agreement with him. It is plain, therefore, that *Andrew Grant* ſent this Letter to *John Fordyce*, as a Perſon he confided in; intimately acquainted with every Circumſtance of the Tranſaction it related to, and who was himſelf to become one of the Guarantees for it, for his Approbation; and with Power to deliver it when the Events happened for which it had been demanded, and when the Situation of Parties, as above mentioned, made ſuch a Step proper: Wherefore *John Fordyce* was not intitled, in conſequence of *Andrew Grant*'s Letter, to deliver this Letter of Guarantee, till the Diſſolution of the Partnerſhips of *Fordyce*, *Grant*, and *Fordyce*, *Malcolm*, and Company, as above ſtated, made this Step proper.

That before the Letter reached *John Fordyce*'s Hands he had ſtopt Payment; nay, his Effects, and that of the ſeveral Partnerſhips to which he and *Andrew Grant* belonged, were, in conſequence of their Failure, under Sequeſtration in the Court of Seſſion: That it was a Condition implied in the Reſpondent's Commiſſion, from the Nature of the Thing, even according to the Appellants State of the Caſe, that *Fordyce*, *Grant*, and Company, for whom the Guarantee was pretended to have been granted, ſhould be ſolvent at the Time that *John Fordyce*, by Delivery of this Letter, conſtituted the Reſpondent Surety for thoſe Companies: That their Failure was a virtual Revocation of this Commiſſion; and *John Fordyce* could not have delivered the Letter after this Event, without being guilty of a Breach of Truſt, which the Law would not ſanctify, far leſs oblige him to commit.

That it was not neceſſary to enter into theſe Queſtions, as neither *Andrew Grant* nor *John Fordyce* had delivered the Letter of Guarantee; it was ſtill in the Poſſeſſion of the Reſpondent's Attorney, *John Fordyce*, as it was in the Hands of Mr. Solicitor *Dundas*, who holds it in that Light: It belongs to the Reſpondent, and ought to be delivered to him, as he has recalled his Power of Attorney, and demanded it legally to be reſtored to him.

1774, Feb. 24, 1ſt Interlocutor appealed from.

On the 24th of *February* laſt, the Court of Seſſion pronounced the following Judgment in this Cauſe: "*On Report of Lord* "Auchinleck, *Lord Preſident for the Week; and having adviſed the Memorials* HINC INDE, *the* LORDS SUSTAIN *the De-* "*fences for Mr. Baron* Grant, *aſſoilzie* (i. e. acquit) *him from the Action, at the Inſtance of* Douglas, Heron, *and Company,* "*againſt him, and* DECERN; *and* REMIT *to the Lord Ordinary to proceed accordingly.*"

11th March, 2d Interlocutor appealed from.

The Appellants brought this Judgment under Review of the Court by a Reclaiming Petition; and which having been anſwered, the Judges of the Court of Seſſion, by their other Interlocutor of 11th of *March* laſt, *unanimouſly* adhered to their former Interlocutor.

Againſt theſe Two Interlocutors the Appellants have thought proper to appeal to your Lordſhips; but which the Reſpondent humbly hopes will be affirmed, and the Appeal diſmiſſed with Coſts; for the following, among other

REASONS.

I. It is evident from the *Expreſſion* of *my Houſe*, uſed by *Andrew Grant* in his original Letter of Agreement, and from his ſigning that Letter with his own Name only, and not by the *Firm* of *Fordyce*, *Grant*, and Company, that he underſtood the Agreement to be made ſolely on his own Account; to have Effect when the intended Separation of his Partnerſhip ſhould take place.—It is equally clear, from Mr. *Ferguſon*'s accepting of the Letter *ſo* wrote and *ſo* ſubſcribed; *from* the antecedent Aſſiſtance he gave in procuring Credits for *Andrew Grant*, preparative to his ſeparating from Mr. *Fordyce*; *from* the Account he gives of the Tranſaction in his Declaration; *from* the Report he made of the Agreement to the Directors of his Company (as aſcertained by the Declaration of Mr. *Buſhby*, one of them); *and from* the Letter of Agreement having been wrote by *Andrew Grant*, in Preſence of Mr. *Ferguſon* and Mr. *Fordyce*, without any Objection being made to Mr. *Grant*'s ſubſcribing with his own Name, or uſing the *Expreſſion* of *my Houſe*; that Mr. *Ferguſon* did underſtand the Tranſaction in the ſame Manner with Mr. *Grant*; and it is abſolutely incredible, that the Parties could have acted in the Manner they did, if they had intended to make a Tranſaction for *Fordyce*, *Grant*, and Company—The very demanding a Guarantee, ſhows that it could only be meant for Tranſactions with *Andrew Grant*; for the Appellants were engaged in, and then carrying on very extenſive Tranſactions with *Fordyce*, *Grant*, and Company, without demanding any Guarantee whatever.

II. In Law, the Letter is not obligatory upon *Fordyce*, *Grant*, and Company, but merely upon *Andrew Grant*; and therefore no Tranſaction with *Fordyce*, *Grant*, and Company, is applicable to that Letter, or can create an Obligation againſt a Third Party, who meant to guarantee any Tranſaction made in conſequence of the Letter.

III. If the Parties had intended to make the Agreement with *Fordyce*, *Grant*, and Company, it could not affect the Reſpondent, who only meant to guarantee a Tranſaction with his Brother, when ſeparated from Mr. *Fordyce*, and who has uſed Words in his Letter, that cannot be applied to any Tranſaction with *Fordyce*, *Grant*, and Company.—The Rule of the Law is, That all cautionary Obligations are to be ſtrictly conſtrued, and only to have Effect when the Intendment and Words are clear; but to make the Reſpondent's Letter guarantee a Tranſaction with *Fordyce*, *Grant*, and Company, would be going contrary to the *Intendment*, and in direct Contradiction to the *expreſs Words* of the Letter; and to make it guarantee Money not advanced in conſequence of it, would be contrary to Juſtice.

IV. The Reſpondent is not bound to account for or to explain, why the Managers, or Clerks of *Douglas*, *Heron*, and Company, came to underſtand, or rather to act as if they underſtood the Agreement to apply to *Fordyce*, *Grant*, and Company; but it may be conjectured, that the Clerks were led into a Miſtake, from the large current Tranſactions with *Fordyce*, *Grant*, and Company; or that the Managers found the Affairs of the Company,

Company, did not admit of Delay in the intended Operations, until the Diſſolution of the Partnerſhip of *Fordyce, Grant*, and Company ſhould take place, and were, therefore, for ſerving their own Purpoſes, diſpoſed, either to miſconſtruct the Letter of Agreement, or to go on with *Fordyce, Grant*, and Company, upon the Plan of the Agreement.——Neither is the Reſpondent bound to account for his own Brother's accepting of the Depoſite in the Name of *Fordyce, Grant*, and Company; but he is at Liberty to ſuppoſe that his Brother might underſtand, that *Douglas, Heron*, and Company, were inclined to go on upon the Plan of the Agreement with *Fordyce, Grant*, and Company, until that Company ſhould be diſſolved, and that, at any rate, he was unwilling to throw any Obſtacle in the Way to his, or his Company's, having the Uſe of the 6000 *l.* without Intereſt: This may have been improper on his Part, but it never can operate againſt the Reſpondent, who was ignorant of every Part of the Tranſaction.

V. The Reſpondent's Letter never was delivered to the Appellants either in *Fact* or in *Conſtruction* of *Law*. The Reſpondent delivered it to his Brother, to be kept until the proper Time of delivering it ſhould come, by the Diſſolution of the Partnerſhip of *Fordyce, Grant*, and Company. In that Reſpect, the Reſpondent's Brother acted as his Attorney, and his tranſmitting the Letter in the Manner he did, was at moſt a Delegation of that Attorneyſhip; and it was competent to the Reſpondent to recal the Powers given, at any Time before *Delivery*; and he did accordingly recal the Power of Delivery, by ſending his Agent to demand the Letter from Mr. *Fordyce*; and which was done prior to Mr. *Fordyce's* receiving the Letter; and when, indeed, he could not legally have delivered the Letter, ſo as to affect the Intereſt of any Perſon, he, as well as his Partner *Andrew Grant*, (who ſent him the Letter) having become Bankrupts before receiving the Letter, and their Eſtates put under Sequeſtration.

App. No.

VI. *Andrew Grant* came under no Obligation, in his Letter of Agreement, to get any Perſon to guarantee the Depoſit of 6000 *l.*; it is true, that *Alexander Ferguſon*, by his Letter of the 7th *May*, demanded a Letter of Guarantee from *Andrew Grant*; but it was not for the Depoſit of 6000 *l.* but for his whole Tranſaction with *Douglas, Heron*, and Company, which, by the Agreement, were to amount at leaſt to 450,000 *l.* annually. *Andrew Grant's* Anſwer of the 14th *May* to that Letter, ſaying, that he would ſend a Letter of Guarantee for the Depoſit in a few Days, is not an Anſwer to Mr. *Ferguſon's* Demand of a Guarantee for the whole Tranſactions, and therefore this limited Offer of a Guarantee, never having been accepted of by the Appellants, was not even obligatory upon *Andrew Grant*; and that Circumſtance would of itſelf be ſufficient to protect the Reſpondent, was his Letter even to be underſtood applicable to a Tranſaction with *Fordyce, Grant*, and Company.

JA. MONTGOMERY.
AL. WEDDERBURN.

Die Mercurij 1° Junij 1774.

Ordered & adjudg'd That the Appeal be Diſmiſs'd and that the Interlocr. therein Complain'd of be affirm'd.

H.

APPENDIX.

NUMBER I.

QUESTIONS for Mr. *Alexander Ferguſon*, in the Proceſs at the Inſtance of *John Grant*, Eſq; One of the Barons of Exchequer,

AGAINST

Meſſrs. *Douglas*, *Heron*, and Company, Bankers in *Ayr*.

IS this a juſt Copy of the Articles agreed on betwixt you, as accounting for Meſſrs. *Douglas*, *Heron*, and Company, and Mr. *Andrew Grant*?

Were Mr. *Charles Ferguſon* and Mr. *John Fordyce* preſent when theſe Articles were ſettled, and the Agreement executed?

Did you, previous to any Propoſal anent the ſaid Agreement, know that an Account had been agreed to be opened in the Name of Mr. *Andrew Grant*, by Meſſrs. *Kelby* and *Syme*, to the Extent of 20,000 *l.* and that Mr. *Fordyce* had guaranteed it to the Extent of 10,000 *l.* and Mr. Baron *Grant* for 10,000?

At the Time that this Account was agreed to, did you know that it had been concerted betwixt Mr. *John Fordyce* and Mr. *Andrew Grant*, that they ſhould diſſolve their Copartnerſhip, and that Mr. *Andrew Grant* was to carry on Buſineſs in his own Name, or with other Partners than Mr. *Fordyce*?

Did you know that this Account with Meſſrs. *Kelby* and *Syme*, was applied for with a View to facilitate the above Separation of Mr. *Fordyce* and Mr. *Grant*, and procure Mr. *Grant* Credit when Mr. *Fordyce* ſhould retire from the Copartnery?

Did you at any Time, and when, inform Mr. *Fordyce*, that it would be neceſſary for Mr. *Andrew Grant* to give ſome of his Friends as Sureties to Meſſrs. *Heron* and Company, for his Tranſactions with them, in conſequence of the above Agreement entered into with you for them?

Did Mr. *Fordyce* at that Time offer himſelf as One of the Sureties for Mr. *Grant* in that Tranſaction?

Did you make any Objection to receiving Mr. *Fordyce* as ſuch Surety?

Did you ever aſk Mr. *Fordyce* to give any of his Friends as Sureties for himſelf for the Tranſactions in conſequence of the above Agreement?

There are few Queſtions that occur to Mr. Baron *Grant* as proper to be put to Mr. *Ferguſon*, but as he is a Stranger to this Affair, though deeply intereſted in it, he muſt beg Mr. *Ferguſon* will explain it fully, and produce what Papers or Letters he is poſſeſſed of which can throw Light on it, that material Juſtice may be done to all Parties.

NUMBER II.

COMPEARED *Alexander Ferguſon*, Eſq; of *Craigdarroch*, and declares, That in the Month of *March* and *April* 1771, he had frequent Opportunities to ſee Mr. *John Fordyce* and Mr. *Andrew Grant* in *London*: That in the Courſe of ſeveral Converſations he had with Mr. *Fordyce* during that Period, he often heard Mr. *Fordyce* ſay, That he was ſoon to take his Name out of the Houſes of Buſineſs he was concerned in, both in *London* and *Edinburgh*: That the Declarant obſerved to him, that unleſs Mr. *Grant*'s Credit was well ſupported, ſuch a Step might diſtreſs him, by creating Demands upon the Houſe; Mr. *Fordyce* replied, That he was determined to leave Mr. *Grant* poſſeſſed of ſuch Powers, as would ſufficiently enable him to ſupport the Credit of his Houſe, and as an Inſtance of the Credits he would leave him poſſeſſed of, requeſted as a Favour of the Declarant, that he would introduce him to Meſſrs. *Kelby* and *Syme*, Merchants in *London*, with whom he intended to eſtabliſh a Credit to the Amount of 20,000 *l.* Sterling for Mr. *Andrew Grant*: The Declarant accordingly introduced Mr. *Fordyce* to Mr. *James Syme*, the acting Partner of that Houſe, and was preſent at their communing and ſettling a Credit for Mr. *Andrew Grant*, to the Amount of 20,000 *l.* Sterling, and which he underſtood was to be guaranteed to the Amount of 10,000 *l.* Sterling, by Mr. *Fordyce*, and 10,000 *l.* Sterling by Mr. Baron *Grant*: Mr. *Fordyce* alſo requeſted the Declarant to introduce him to Meſſrs. *Mayne* and *Needham*, Bankers, in *Jermyn-Street*, *London*, with whom he alſo intended to eſtabliſh a Credit to the Amount of 12 or 15,000 Pounds Sterling for Mr. *Andrew Grant*; the Declarant introduced Mr. *Fordyce* and Mr. *Grant* to theſe Gentlemen, and has ſince been informed, that a Credit to the Amount of 12 or 15,000 Pounds Sterling was eſtabliſhed with them for Mr. *Grant*, and guaranteed by Bond granted for that Purpoſe by Mr. *Fordyce*. In the Months of *March* and *April* 1772, the Declarant was employed to eſtabliſh Accounts in *London*, for the late Banking Company of *Douglas*, *Heron*, and Company, and had many Converſations on that Subject with Mr. *John Fordyce*, Mr. *Andrew Grant*, and Mr. *Charles Ferguſon*, Merchant in *London*; and after many Communings, particularly with the Two laſt mentioned Gentlemen, he entered into an Agreement with Mr. *Andrew Grant*, for a Part of the Buſineſs of *Douglas*, *Heron*, and Company, to be conducted by his Houſe, and with Mr. *Charles Ferguſon* for another Part of it, to be conducted by his Houſe. The Terms of theſe Agreements were preciſely the ſame, but were not to be binding upon *Douglas*, *Heron*, and Company, unleſs they were approved of by the Directors of that Company, upon the Declarant's reporting them to them, when he went to *Scotland*; and the Declarant thinks, that the Copy of theſe Agreements now ſhown to him, is a juſt one. A few Days after the Date of theſe Agreements, the Declarant came to *Edinburgh*; and upon reporting them to the Directors of *Douglas*, *Heron*, and Company, they met with their Approbation, and the Declarant was appointed to notify this to Mr. *Andrew Grant*, and Mr. *Charles Ferguſon*, and deſire each of theſe Gentlemen to ſend a Letter of Guarantee, by one or two of their Friends for their Approbations. In the Beginning of *May* 1772, the Declarant wrote each of theſe Gentlemen to that Purpoſe, and received a Letter from Mr. *Andrew Grant*, of Date the 14th Day of that Month at *London*, in which is the following Paſſage: "I have received your Favours of the 7th and 9th Inſtant, and by the firſt I obſerve, that Meſſrs. *Douglas*, *Heron*, "and Company, have confirmed the Agreement you made with me, for carrying on a Part of their Buſineſs in *London*, and "that they are ſoon to remit for the ſtipulated Depoſite. I ſhall ſend a Letter of Guarantee for that Depoſite in a few Days." And declares, That he does not recollect having ever had any more Correſpondence either with Mr. *Grant* or any other Perſon upon this Subject. And this he declares to be Truth, &c.

NUMBER III.

AS Mr. *Alexander Ferguſon*, in the preceding Anſwers [he ſent to the Lord Advocate in the Queſtion betwixt Meſſrs. *Douglas*, *Heron*, and Company, and Mr. Baron *Grant*], overlooked ſome Queſtions then put to him, and others have occurred ſince proper to be aſked, Mr. Baron *Grant* begs he will be ſo good as ſend his Anſwers to the following Queſtions to the Lord Advocate.

1*mo*, Did you at any Time, and when, inform Mr. *John Fordyce*, that you had wrote to Mr. *Andrew Grant*, that it would be neceſſary for him to give ſome of his Friends as Sureties for Meſſrs. *Douglas*, *Heron*, and Company, for his Tranſactions with them, in conſequence of your Agreement with him in their Name while at *London*? or did you inform Mr. *Fordyce* of ſuch Neceſſity, or Mr. *Grant*?

2*do*, Did Mr. *John Fordyce*, at that Time or afterwards, offer to you to become one of Mr. *Andrew Grant*'s Sureties to Meſſrs. *Douglas*, *Heron*, and Company, for ſuch Tranſactions?

3*tio*, Was you ſatisfied with ſuch Offer, or did you make any Objections to it when made?

4*to*, Did you report Mr. *Fordyce*'s above Offer of becoming one of the Sureties as aforeſaid for Mr. *Andrew Grant*, to the Directors of Meſſrs. *Douglas*, *Heron*, and Company's Bank?

5*to*, Did they appear ſatisfied with, and approve of the ſame?

NUMBER IV.

IN Anſwer to the preceding Queſtions, the Declarant thinks, that he informed Mr. *Fordyce* ſoon after he had wrote Mr. *Grant*, as mentioned in his former Declaration, of the Neceſſity of Mr. *Grant*'s giving ſome of his Friends as Guarantee for the Tranſactions of his Houſe with *Douglas*, *Heron*, and Company, and ſo far as he can recollect, thinks Mr. *Fordyce* ſaid, that Mr. *Grant* would have no Difficulty as to that Point, and added, that he himſelf would be one of them; and the Declarant alſo thinks, that he mentioned what had paſſed between him and Mr. *Fordyce* at a Meeting of the Directors of *Douglas*, *Heron*, and Company, but does not recollect whether they were ſatisfied with it or not. (Signed) ALEXANDER FERGUSON, JAMES MONTGOMERY.

NUMBER V.

JOHN Buſhby, Writer in *Dumfries*, one of the Partners of *Douglas*, *Heron*, and Company, Bankers in *Ayr*, being examined, declares, That in the End of *April*, or Beginning of *May*, 1772, Mr. *Ferguſon*, the above Declarant, informed him of the Converſation mentioned in the above Declaration. And further declares, That he, as one of the Directors of the ſaid Banking Company, was preſent at a Meeting of Directors in *Edinburgh*, in *May* 1772, when Mr. *Ferguſon* reported to them the Tranſaction he made with Mr. *Grant*, and of the Depoſite the Company were to make of 6000 *l.* Sterling. Mr. *Ferguſon* did inform the Meeting, That Mr. *Fordyce*, and the Purſuer, Mr. *Grant*, were to be bound for the ſame, with which the Meeting was ſatisfied, as the Declarant underſtood. And further declares, That it was underſtood at that Meeting, that ſuch Security was to be lodged before the Money was remitted to Mr. *Grant* at *London*; and that ſeveral Enquiries have been ſince made, both by the Partners and Directors of the Bank, by whoſe Authority the Remittance of the 6000 *l.* Sterling was made before the Securities were lodged, and Reflections made on that account.

NUMBER VI.

COMPEARED, *John Fordyce*, Eſq; Receiver-General, who being examined, declares, That ſoon after his ſtopping Payment, *Iſaac Grant*, Agent for Mr. Baron *Grant*, called upon him, and enquired, Whether the Declarant knew if a Letter of Security from Mr. Baron *Grant* to *Douglas*, *Heron*, and Company, was delivered? To which the Declarant anſwered, That he knew nothing of the Matter: and declares, That at that Time he did not well underſtand what *Iſaac Grant* enquired after, as he had not received the Letter in queſtion, under the Cover of another Letter from Mr. *Andrew Grant*, Brother to the Baron, dated at *London*, and importing, That he, the Declarant, might deliver the Letter of Security incloſed to *Douglas*, *Heron*, and Company, if he thought proper. Declares, That after conſidering what ought to be the Rule of his Conduct in a Matter of that Sort, he judged it moſt proper to depoſite the Letter with a Friend, that by no Act of his he might injure the Rights or Intereſts of any Perſon or Party which might depend upon that Letter, and might at the ſame Time avoid an Appearance of any Intention to conceal the Letter; and accordingly did depoſite the ſaid Letter of Security with Mr. *Dundas* Solicitor General, in whoſe Cuſtody he believes it ſtill to be. Declares, That he imagines he has Mr. *Andrew Grant*'s Letter which covered the Letter of Security, and will produce it in Proceſs if he can find it. And being interrogate by Mr. *Orr*, on the Part of *Douglas*, *Heron*, and Company, whether when *Iſaac Grant* firſt applied to him for the Letter, he the Declarant knew any Thing of the Cauſe of granting ſuch a Letter as was enquired after? declares, That being in *London* in Spring 1772, he was preſent in the *Globe Tavern* with Mr. *Andrew Grant*, and Mr. *Alexander Ferguſon* of *Craigdarroch*, then one of the Directors of *Douglas*, *Heron*, and Company, when they treated about and ſettled the Terms of an Account to be kept by Mr. *Andrew Grant* in *London* for the ſaid Company, as their Correſpondent in tranſacting Buſineſs in *London*; and which Agreement was then wrote and ſigned. That in a Converſation he had with Mr. *Ferguſon* about that Time, he remembers Mr. *Ferguſon* ſaid to him, when talking upon the Subject of *Andrew Grant* being the Correſpondent of *Douglas*, *Heron*, and Company, That it would be neceſſary Mr. *Grant* ſhould give ſome Security to *Douglas*, *Heron*, and Company, for the Sum to be depoſited by the Agreement: To which the Declarant anſwered, That he was perſuaded that he would find no Difficulty, and offered himſelf to become One of his Securities, having mentioned formerly to Mr. *Ferguſon*, and it being known and underſtood by him, that he the Declarant was to go out of the Houſe: That the above Converſation with Mr. *Ferguſon*, and the Probability of Mr. *Grant*'s having obtained from the Baron his Brother, a Security for him in that Buſineſs, made the Declarant imagine that the Letter enquired after by *Iſaac Grant* was a Letter of Security concerning that Buſineſs. All which he declares to be Truth, *&c.*

Meſſrs. Douglas, Heron, *and Company*, Appellants

John Grant, *Eſquire*, - - - Reſpondent.

The Reſpondent's CASE.

To be heard at the Bar of the Houſe of Lords on
the of 1774.